

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

IN RE:)	
)	Chapter 11
Blue Willow Inn Restaurant, Inc., et al.,)	
)	Case Nos. 10-31267, 10-31269, 10-31270
Debtors.)	and 10-31266
)	
)	(Jointly Administered Under
)	Case No. <u>10-31267</u>)
_____)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that Wells Fargo Bank, N.A. (the “**Movant**”) has filed its *Motion for Relief from the Automatic Stay* (the “**Motion**”) and related papers with the Court seeking an order granting Movant relief from the automatic stay so that it can exercise its state law rights including, without limitation, foreclosure with respect to certain real property and personal property located in Walton County, Georgia.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion at **2:00 p.m.** on **August 1, 2011**, United States Courthouse and Post Office, 115 East Hancock Avenue, Athens, Georgia 30601.

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the Court’s ruling on the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the matter, then you or your attorney must attend the hearing. You may also file a written response to the Motion with the Clerk at the address stated below, but you are not required to do so. If you file a written response, it must be mailed or delivered so that it is received by the Clerk at least two (2) business days before the hearing, and you must attach a certificate stating

when, how and on whom (including addresses) you served the response. The address of the Clerk's office is: Clerk of the United States Bankruptcy Court for the Middle District of Georgia, 433 Cherry Street, P.O. Box 1957, Macon, Georgia 30202. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty (30) days of filing the Motion and agrees to a hearing on the earliest possible date. Movant consents to the stay remaining in place until the Court orders otherwise.

Dated: June 28, 2011.

/s/ Gwendolyn J. Godfrey
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW WELLS FARGO BANK, N.A. (the “**Bank**”), by and through undersigned counsel, and moves the Court pursuant to 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure for an order authorizing relief from the automatic stay regarding certain property of the Debtors’ estates, and in support thereof shows the Court as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. The relief requested herein may be granted in accordance with the provisions of Sections 105(a) and 362 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

4. On July 20, 2010, Blue Willow Inn Restaurant, Inc. (the “**Restaurant**”), Blue Willow Gift Shop, Inc. (the “**Gift Shop**”), Blue Willow Inn Village, Inc. (the “**Village**”), and

Billie R. Van Dyke and E. Louis Van Dyke (together with the Restaurant, the Gift Shop, and the Village, the “**Debtors**”) each filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the “**Petition Date**”). The Debtors’ bankruptcy cases are being jointly administered pursuant to Bankruptcy Rule 1015.

5. The Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

A. Magnolia Hall - the 1.2822 Acres.

6. On June 13, 2007, E. Louis Van Dyke and Billie R. Van Dyke (collectively, “**Borrowers**”) executed a promissory note in favor of the Bank in the original principal amount of \$490,000.00 (the “**Magnolia Hall Note**”). A true and correct copy of the Magnolia Hall Note is attached hereto as Exhibit “1”.

7. The Magnolia Hall Note is secured by, *inter alia*, that certain Deed to Secure Debt and Assignment of Rents dated June 14, 2007, as recorded on June 15, 2007 in Deed Book 2743, Page 371, Walton County, Georgia Records (the “**Magnolia Hall First Security Deed**”). A true and correct copy of the Magnolia Hall First Security Deed is attached hereto as Exhibit “2”.

8. The Magnolia Hall First Security Deed grants the Bank a security interest in a circa 1910 Greek-Revival mansion converted to a special events venue located on 1.2822 acres at 147 North Cherokee Road, Social Circle (incorporated), Georgia 30025 (“**Magnolia Hall**”) and the land on which it is located, as more fully described in the Magnolia Hall First Security Deed (Magnolia Hall together with the land on which it is located, the “**1.2822 Acres**”).

9. As further security for the Borrowers obligations to the Bank, the Magnolia Hall First Security Deed grants the Bank a security interest in any leases, rents, issues and profits of the 1.2822 Acres (“**Magnolia Hall Rents**”) as more fully described in the Magnolia Hall First Security Deed.

10. On October 9, 2008, Borrowers executed a promissory note in favor of the Bank in the original principal amount of \$100,000.00 (the “**Line of Credit Note**”). A true and correct copy of the Line of Credit Note is attached hereto as Exhibit “3”.

11. The Line of Credit Note is secured by, *inter alia*, that certain Deed to Secure Debt and Assignment of Rents dated October 9, 2008, as recorded on April 24, 2009 in Deed Book 3031, Page 147, Walton County, Georgia Records (the “**Magnolia Hall Second Security Deed**” together with the Magnolia Hall First Security Deed, the “**Magnolia Hall Security Deeds**”). A true and correct copy of the Magnolia Hall Second Security Deed is attached hereto as Exhibit “4”.

12. The Magnolia Hall Security Deeds secure all obligations of Borrowers to the Bank, including all other obligations referenced in this Motion.

13. As security for the obligations of the Borrower to the Bank as set forth in the Magnolia Hall Note and the Line of Credit Note: (i) the Restaurant executed guaranties in favor of the Bank dated October 2, 1995 and June 14, 2007 (the “**Restaurant’s Guaranties**”), (ii) the Gift Shop executed a guaranty in favor of the Bank dated October 2, 1995 (together with the Restaurant’s Guaranties, the “**Magnolia Hall Guaranties**”). True and correct copies of the Magnolia Hall Guaranties are attached hereto collectively as Exhibit “5”.

B. Blue Willow Restaurant, Village and Gift Shop - the 7.11 Acres.

14. On December 4, 2007, the Village executed a promissory note in favor of the Bank in the original principal amount of \$2,875,000.00 (as modified, the “**Blue Willow Note**” together with the Magnolia Hall Note and Line of Credit Note, the “**Notes**”). A true and correct copy of the Blue Willow Note is attached hereto as Exhibit “6”.

15. The Blue Willow Note was executed in connection with that certain Construction Loan Agreement dated December 4, 2007 between the Village and the Bank (the “**Blue Willow Loan Agreement**”) containing the agreement of the parties with respect to, *inter alia*, the use of the proceeds from the Blue Willow Note. A true and correct copy of the Blue Willow Loan Agreement is attached hereto as Exhibit “7”.

16. The Blue Willow Note and the Blue Willow Loan Agreement are secured by, *inter alia*, that certain Deed to Secure Debt, Assignment of Rents and Security Agreement, dated December 4, 2007, executed by Louis and Billie Van Dyke and recorded in Deed Book 2844, Page 251, Walton County, Georgia Records (the “**Blue Willow Security Deed**”). A true and correct copy of the Blue Willow Security Deed is attached hereto as Exhibit “8”.

17. The Blue Willow Security Deed secures all obligations of the Village to the Bank, including all other obligations referenced in this Motion.

18. The Blue Willow Note is further secured by that certain Assignment of Leases and Rents, dated December 4, 2007, executed by Louis and Billie Van Dyke and recorded in Deed Book 2844, Page 265, Walton County, Georgia Records (the “**Blue Willow Assignment of Rents**”). A true and correct copy of the Blue Willow Assignment of Rents is attached hereto as Exhibit “9”.

19. The Blue Willow Security Deed grants the Bank a security interest in 7.11 acres of land which includes a restaurant located in the Greek-Revival mansion; the adjacent gift shop, the Blue Willow Village and parking lot located immediately behind the restaurant and gift shop, an office building, and a small parcel of unimproved land (the “**7.11 Acres**”).

20. Additionally, the Blue Willow Security Deed grants the Bank a security interest in furnishings, equipment, and other personal property located on or about the premises (the “**Blue Willow Personal Property**”), as more particularly described in the Blue Willow Security Deed.

21. As further security for the Borrowers obligations to the Bank, the Blue Willow Security Deed grants the Bank a security interest in all present and future leases, subleases, licenses, occupancy agreements, rents, income, receipts, revenues, issues and profits for all or any portion of the 7.11 Acres (“**Blue Willow Rents**” together with Magnolia Hall Rents, the “**Rents**”) as more fully described in the Blue Willow Security Deed.

22. Specifically, the Blue Willow Assignment of Rents and the Blue Willow Security Deed grant the Bank a security interest in the Blue Willow Rents collected from the lease agreements between Borrowers (as landlord) and the Restaurant (as tenant); the rents collected from the lease agreement between the Borrowers (as landlord) and the Gift Shop (as tenant); and any other lease agreement with a tenant paying rent for use of the 7.11 Acres and/or any improvements thereon.

23. The Bank’s properly perfected security interests in the 7.11 Acres, the Blue Willow Rents, and the Blue Willow Personal Property are evidenced by certain UCC-1 Finance Statements, filed on December 18, 2007 (the “**UCCs**”). True and correct copies of the UCCs are attached hereto as Exhibit “10”.

24. On or about April 30, 2009, the Restaurant, the Gift Shop and Louis and Billie Van Dyke (collectively “**Blue Willow Guarantors**”) guaranteed all obligations of the Village to the Bank, (the “**Blue Willow Guaranties**”). True and correct copies of the Blue Willow Guaranties, are attached hereto collectively as Exhibit “11”.

C. The Swap Agreement.

25. In connection with the Blue Willow Note, the Blue Willow Loan Agreement, and Blue Willow Security Deed, and as an independent obligation, the Village and the Bank entered into that certain ISDA Master Agreement, dated December 4, 2007, as evidenced by that certain Swap Transaction Confirmation dated December 14, 2007, with Reference Number 2252160 (collectively, the “**Swap Agreement**”, together with the Notes, the Blue Willow Loan Agreement, the Magnolia Hall Security Deeds, the Blue Willow Security Deed, and the Blue Willow Assignment of Rents, the “**Loan Documents**”). The Swap Agreement is secured by the Blue Willow Security Deed. A true and correct copy of the Swap Agreement is attached hereto as Exhibit “12”.

D. Defaults.

26. Borrowers failed to pay the Line of Credit Note by its maturity date of October 31, 2009.

27. On or about January 20, 2010, the Magnolia Hall Note was defaulted because of, *inter alia*, the Borrowers' and Magnolia Hall Guarantors' failure to pay the Line of Credit Note in full by its maturity date of October 31, 2009.

28. Accordingly, as of January 20, 2010, the Magnolia Hall Note and Line of Credit Note were in default. No payment has been made on these notes since their default.

29. The Blue Willow Note was defaulted on or about January 20, 2010 by virtue of, but not necessarily limited to, the Village's failure to pay principal and interest due under the Blue Willow Note.

30. Accordingly, as of January 20, 2010, the Blue Willow note was in default. No payment has been made on this note since its default.

31. The Village failed to make net interest payments under the Swap Agreement to the Bank when due and the Swap Agreement was terminated by Movant on April 2, 2010.

E. Acceleration and Demands.

32. On or about January 20, 2010, the Bank accelerated the indebtedness owed under the Notes and made demand for the amounts due thereunder, including statutory attorneys' fees due in accordance with the Notes and O.C.G.A. §13-1-11. A true and correct copy of the Bank's demand is attached hereto as Exhibit "13".

33. On April 2, 2010, the Bank terminated the Swap agreement effective April 6, 2010. True and correct copies of the (i) Notice of Early Termination of the Swap Agreement for the Event of Default and (ii) Notice of Amount Due Following Early Termination issued by the Bank are attached hereto collectively as Exhibit "14".

34. The amount owed to the Bank under the Swap Agreement, as of the Petition Date, is \$197,952.13, plus interest of \$2,859.31, being a total of \$200,811.44 (the “**Swap Balance**”).

The Swap Balance is secured by the 7.11 Acres pursuant to the Blue Willow Security Deed.

35. The principal amount due under the Magnolia Hall Note as of the Petition Date was of \$456,194.33, plus interest of \$15,927.03, plus late fees of \$1,026.70, (totaling **\$473,148.06**), plus interest, costs, and attorneys’ fees continuing to accrue.

36. The principal amount due under the Line of Credit Note as of the Petition Date was of \$99,393.16, plus interest of \$638.43 (totaling **\$100,031.59**), plus interest, costs, and attorneys’ fees continuing to accrue.

37. The principal amount due under the Blue Willow Note as of the Petition Date was of \$2,087,124.99, plus interest of \$27,417.41, plus fees of \$4,708.57 (totaling **\$2,119,250.97**), plus interest, costs, and attorneys’ fees continuing to accrue.

38. The total amount due under the Loan Documents as of the Petition Date is \$2,893,242.06.

39. The amounts due under the Loan Documents were not paid and remain owing as of the date of this Motion.

40. On or about July 1, 2010, the Bank exercised its right to demand all Rents accruing on the 1.2822 Acres and the 7.11 Acres. On July 1, 2010, the Bank also duly noticed the Debtors of its intent to initiate foreclosure proceedings against the Debtors pursuant to the Loan Documents. However, before the Bank could begin collecting the Rents or the foreclosure proceedings, the Debtors filed bankruptcy. A true and correct copy of the Bank’s demand for Rents and foreclosure notice letter is attached hereto as Exhibit “15”.

41. Thirteen (13) days before the date set for the 1.2822 Acres and the 7.11 Acres foreclosures, the Debtors filed the instant bankruptcy proceeding, thereby forestalling the Bank's foreclosure efforts.

ARGUMENT AND CITATION OF AUTHORITY

42. By this Motion, the Bank requests relief from the automatic stay to exercise its rights under the Loan Documents and state law, including, without limitation, the right to foreclose on the 1.2822 Acres, the 7.11 Acres and the Blue Willow Personal Property (collectively hereinafter, the "***Property***") and to confirm under O.C.G.A. §44-14-161 any real property foreclosure sale.

43. The Bank should be granted relief from the automatic stay under Section 362(d)(2) of the Bankruptcy Code, which provides that the Court shall grant a party relief from the automatic stay with respect to a stay of an act against property if (i) the debtor does not have any equity in such property and (ii) the property is not necessary to an effective reorganization. See 11 U.S.C. § 362(d)(2).

44. In the alternative, the Bank should be granted relief from the automatic stay under Section 362(d)(1), which provides that the Court shall grant a party relief from the automatic stay for "cause", including those circumstances when the debtor cannot provide such party with adequate protection of its property interest. See 11 U.S.C. § 362(d)(1). Cause has been defined to mean any reason whereby a creditor is receiving less than its bargain from a debtor and is without a remedy because of the bankruptcy proceeding. In re Martens, 331 B.R. 395, 398 (8th Cir. 2005) (citing In re Food Barn Stores, Inc., 159 B.R. 264, 266 (Bankr. W.D. Mo. 2004)).

**The Automatic Stay Should Be Lifted Under § 362(d)(2)
Because The Debtors Have No Equity In The Property**

45. At the outset, the Borrowers stated in their Schedules that the fair market value of the 1.2822 Acres was \$860,000.00 and that the fair market value of the 7.11 Acres was \$2,690,000.00 [D.I. # 1].¹ Subsequently, however, in the Debtors' Application To Employ King Industrial Realty, Inc. as Their Real Estate Broker ("*Debtors' Application to Employ*") [D.I. # 94], the Debtors' reduced the value significantly, listing the 1.2822 Acres for \$539,000.00, a decrease of more than 37% from the scheduled value, and listed the 7.11 Acres for \$1,354,900.00, a decrease of more than 49% from the scheduled value. Thus, in total, the Debtors' most recent valuation for the Property securing the Debtors' obligation of \$2,893,242.06 to the Bank is \$1,893,900.00.

46. It further appears that even the reduced valuations are overly optimistic. The Bank shows that the 1.2822 Acres, including Magnolia Hall, is not worth more than \$475,000.00 in its current condition. The value of the Magnolia Hall – a special events facility – is badly in need of repairs and maintenance, including the front columns, kitchen area, and landscaping. The lack of maintenance has no doubt contributed to the fact that the facility has not been rented in two years. As reflected in its statement of financial affairs and current operating reports, the Debtors do not have the resources to rehabilitate Magnolia Hall.

47. Similarly, the Bank shows that the 7.11 Acres is not worth more than \$1,315,000.00 in its current condition. The area in which the Restaurant and Village are located is considered to be a marginal-to-adequate location for a well conceived real estate development, which the 7.11 Acres, as configured, is not. The Restaurant is located in a converted home in

¹ In order to calculate the value Borrowers' attributed to the 7.11 Acres in the Borrowers' Schedules, the Bank added together the values Borrowers' set forth for the Village and Restaurant and the Office.

average condition, with a less-than-ideal setup for a restaurant. Additionally, the Village is located behind the Restaurant and it has minimal to no visibility to the passing public. Moreover, the Restaurant's kitchen is in need of major upgrading, and the Debtors do not have the resources to fund this capital expenditure.

48. Pursuant to the Loan Documents, the Bank has a claim against the Debtors' bankruptcy estates in an amount not less than \$2,893,242.06, plus applicable interest, attorneys' fees, and penalties continuing to accrue, all of which is secured by the 1.2822 Acres and the 7.11 Acres. Thus, even if the Debtors' current listing price of \$1,893,900.00 were to be realized, the Debtors' still have no equity in the Property being short by approximately \$1,000,000.

49. The Bank also holds a line of credit secured by Mr. and Mrs. Van Dyke's home that had a balance as of the Petition Date of approximately \$93,000.00, plus interest, fees, and attorneys' fees continuing to accrue (the "*Home Loan*"). The Loan Documents and the Home Loan are cross-collateralized and cross-defaulted. Mr. and Mrs. Van Dyke's home is appraised for \$275,000.00. Therefore, even if the full appraisal price were realized, the Van Dyke's net equity in the home of approximately \$180,000.00 would bring the value of the Debtors' assets securing the Bank's loans to \$2,073,000.00 (\$1,893,000.00 plus \$180,000.00). Thus, the Debtors would still be \$820,000.00 short of having any equity in the commercial property, based upon the Debtors' own estimates.

50. Inasmuch as the Debtors' concede that the value of the Property is substantially less than the amount of the secured debt, the Bank is entitled to relief from the automatic stay unless the Debtors can show that the property is necessary for a reorganization reasonably in prospect.

**The Debtors Cannot Demonstrate that the Property
is Necessary for an Effective Reorganization Reasonably in Prospect**

51. Once lack of equity in the property is established, the burden shifts to the debtor to demonstrate that the property is necessary to an effective reorganization reasonably in prospect. See, e.g., Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1313 (5th Cir. 1985). See U.S. Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 375 (1988) (to prevail against the movant, the debtor must do more than show high hopes; it must be able to show a reasonable prospect for a successful reorganization within a reasonable time). The reorganization must be realistically possible, and the mere fact that the property might be indispensable to the debtor's survival is insufficient. See In re Timbers of Inwood Forest Associates, Ltd., 808 F.2d 363, 370-71 (5th Cir. 1987) (en banc), aff'd, 484 U.S. 365 (1988); In re Albany Partners, Ltd., 749 F.2d 670, 674 (11th Cir. 1984). The Debtor's inability to meet this requirement is evident for several reasons.

52. First, at the time of filing this Motion, the Debtors have not proposed a plan of reorganization, the exclusivity period having been extended three times.

53. Second, the Property is not generating sufficient cash flow to meet monthly operating expenses, so there is no ability to pay down its debts to the Bank. In the monthly operating reports filed on June 17, 2011, the Restaurant shows a net income loss of \$51,819.37; the Village shows a net income loss of \$73,394.05; and the Gift Shop shows a net income loss of \$51,007.55, an estimated total of \$176,420.97 for the ten months following Debtors' Petition Date.

54. Third, the Debtors inability to operate profitably is further evidenced by the Georgia Department of Revenue (the "**Department**") claims filed on May 12, 2011 against three

of the Debtors. The Department claims are: against Billie R. Van Dyke in the total amount of \$226,048.80; against the Restaurant in the total amount of \$134,740.57; and against the Gift Shop in the total amount of \$14,322.97. See The Georgia Department of Revenue's Objection to Debtors' Motion for Authorization to Sell Debtor Billie R. Van Dyke's Interest in Real and Personal Property ("**Objection**") [D.I. # 128]. In addition, according to the same filing by the Department, the Restaurant has failed to pay post-petition trust fund taxes and the Restaurant filed, but did not pay, its sales and use tax liability for December 2010. See Objection.

55. Fourth, the Debtors have been in default under the Loan Documents since at least January 2010 when the Bank accelerated the Loan Documents and made demand for full payment.

56. For the foregoing reasons, it is highly improbable that the Debtors will be able to propose an effective, confirmable plan of reorganization. There being no equity in the Property and the Debtors being unable to carry their burden as to a plan reasonably in prospect, the Bank should be given the opportunity to protect its interest in its collateral by a grant of relief from the automatic stay. See In re Richardson Group, Inc., 107 B.R. 353, 356 (Bankr. M.D. Fla. 1989); In re Endrex Exploration Co., 101 B.R. 474, 476 (N.D. Tex. 1988). Accordingly, the Bank requests that the Court lift the automatic stay to allow it to continue foreclosure efforts with respect to the 1.2822 Acres and the 7.11 Acres and to confirm any foreclosure sale.

**The Automatic Stay Should Be Lifted For Cause Under § 362(d)(1)
Because The Bank Is Not Adequately Protected**

57. Once the Movant makes a *prima facie* case that cause exists to lift the stay, the burden shifts to the debtor to show that the collateral is not declining in value or that the secured creditor is adequately protected. See, e.g., In re George, 315 B.R. 624, 628 (Bankr. S.D. Ga.

2004); In re Wrecclesham Grange, Inc., 221 B.R. 978, 980 (Bankr. M.D. Fla. 1997); In re Kleibrink, 346 B.R. 734, 760 (Bankr. N.D. Tex. 2006); In re Abdul Muhaimin, 343 B.R. 159, 169-70 (Bankr. D. Md. 2006).

58. While the term “adequate protection” is not defined in the Bankruptcy Code, Section 361 provides three (3) examples of adequate protection in the context of a motion for relief from the automatic stay. Those are: (i) cash payments on a periodic basis; (ii) additional or replacement liens; or (iii) arrangements which guarantee a creditor the indubitable equivalent of its interest in the collateral. See 11 U.S.C. § 361.

59. As to cash payments, the Debtors are unable to service their debt to the Bank and have offered no other arrangement to provide the Bank the equivalent of its interest in the collateral.

60. Further, the Debtors have been unable to make their minimal adequate protection payments to the Bank. On March 23, 2011 the Court entered an order authorizing the Debtors’ use of cash collateral and obligating the Debtors, *inter alia*, to pay to the Bank by the 15th of each month \$10,000.00 as partial adequate protection for the Debtors’ use of such cash collateral (the “**Cash Collateral Order**”) [Doc. No. 111]. On June 17, 2011, the Debtors made their May 15, 2011 payment a month late and their June 2011 payment was also late. Accordingly, the Bank does not consent to the Debtors’ continued use of its cash collateral showing Debtors have not met their burden under §362(d)(1).

61. Moreover, the Bank has a security interest in the Rents collected from the use of any premises located on the 7.11 Acres and the 1.2822 Acres. Upon information and belief, it appears Louis and Billie Van Dyke failed to collect Rents due from the Restaurant and Gift Shop as required under the Restaurant’s and Gift Shop’s lease agreements. See Restaurant’s Monthly

Operating Report [D.I. # 147]; Gift Shop's Monthly Operating Report [D.I. # 56], and Borrower's Monthly Operating Report [D.I. # 46]. Thus, the Debtors' inability to collect the Rents further jeopardizes the Bank's security interest.

Immediate Relief from the Automatic Stay is Appropriate

62. As to an arrangement guaranteeing the Bank the indubitable equivalent of interest in the collateral, the Debtors lack the reserves with which to offer such collateral.

63. Under the instant circumstances, the Bank further requests that the Court grant relief from the stay and waive the fourteen-day waiting period imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure thereby granting relief from the automatic stay to become effective immediately.

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WHEREFORE, the Bank respectfully requests that the Court enter an Order:

1. Lifting the automatic stay to allow the Bank to exercise its rights under the Loan Documents and state law including, without limitation, the right to foreclose on the 1.2822 Acres and the 7.11 Acres and the Personal Property and to confirm under O.C.G.A. §44-14-161 any foreclosure sale;
2. Waiving the fourteen-day waiting period imposed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure; and
3. Granting such other relief as is appropriate.

Respectfully submitted, this 28th day of June 2011.

/s/ Gwendolyn J. Godfrey

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CERTIFICATE OF SERVICE

This is to certify that the foregoing *Motion for Relief from the Automatic Stay and Notice of Hearing* was served by depositing a copy of same in the United States mail, in a properly addressed envelope, with sufficient postage affixed thereon addressed to the parties on the attached Service List.

This 28th day of June 2011.

/s/ Gwendolyn J. Godfrey

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